

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5573 of 2018
and
W.M.P.No.6898 of 2018

R.Purusothaman

..Petitioner

Vs.

- 1.The Presiding Officer,
Labour Court/Appellate Authority
Under the Industrial Employment (Standing Orders) Act, 1946,
Coimbatore.
- 2.The Management of Lakshmi Machine Works Limited.,
Unit II, Kaniyur,
Coimbatore - 641659.
- 3.Certifying Officer/
Joint Commissioner of Labour,
Coimbatore.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the order of the first respondent in I.A.No.694 of 2017 in IESO Appeal No.1/2005, dated 09.10.2017, on the file of the first respondent and quash or expunge that portion of the order in para 10 at page 10, wherein the first respondent has held that it is evident from section 3 and 4 of IE(SO) Act, 1946, that the 3rd respondent is empowered to certify the matter which are not included in the Model Standing Orders provided they are fair and reasonable and direct the first respondent to decide the main Appeal in IESO Appeal 1/2005 on merits and in accordance with law without reference to and uninfluenced by the above said finding/observation.

For Petitioner : Mr.V.Ajoy Khouse
For R1 : Labour Court
For R2 : Mr.S.Ravindran, Senior counsel
for Mr.S.Bazeer Ahamed

For R3 : Mr.M.Elumalai
Government Advocate

O R D E R

The order dated 09.10.2017 passed by the first respondent in I.A.No.694 of 2017 in IESO Appeal No.1 of 2005 is under challenge in the present writ petition.

2. The petitioner was employed as a Fitter in the Assembly Department since the year 1984 under the second respondent. The petitioner states that he was transferred to another place with effect from 01.11.2001, situated 30 kms away. The claim of the writ petitioner is that the transfer order was tainted with malafide and vindictiveness. Under those circumstances, the petitioner filed IESO Appeal No.1 of 2005 before the Labour Court, Coimbatore. During the pendency of the case, an interlocutory application was filed by the writ petitioner under Section 151 of the Code of Civil Procedure, r/w Sub-rule 5 and 6 of Rule 6D of the Tamil Nadu Industrial Employment

(Standing Orders) Rules, 1947 to receive the additional documents such as the copy of transfer order issued by the second respondent transferring the petitioner to third respondent Unit dated 03.10.2001, copy of letters sent by the petitioner to second respondent on 10.10.2001 and 11.10.2001, copy of Certified Standing Orders, copy of letters sent by the second respondent to the petitioner, copy of letters sent by the second respondent to the petitioner dated 05.08.2002 and 01.09.2003 copy of Show Cause Notice issued by Lakshmi Machine Works - Unit-I, copy of second Show Cause Notice issued by Lakshmi Machine Works - Unit-I, copy of dismissal order issued by Lakshmi Machine Works - Unit-I, dated 19.02.2004, copy of letter sent by the petitioner to the second respondent dated 28.04.2004, copy of letter sent by the second respondent to the petitioner dated 17.05.2004, copy of claim statement filed by the petitioner and copy of counter statement filed by the Lakshmi Machine Works - Unit-I in ID No.42 of 2005 and copy of Memo filed by the second respondent in adopting the counter statement of third respondent in ID No. 42 of 2005 and take all the above documents on record.

3. The Interlocutory Application filed by the petitioner was allowed by the Labour Court. However, the petitioner has chosen to file the writ petition on the ground that certain observations made in paragraph No.10 of the order passed in Interlocutory Application may affect the merits of the case, set out by the petitioner in the main petition.

4. In other words, the learned counsel appearing for the petitioner states that the observation made by the Labour Court is unnecessary and beyond the jurisdiction. Such observation

made in paragraph No. 10 of the order will affect the case of the petitioner during the adjudication of the main case. Thus, the petitioner is constrained to move the present writ petition with a prayer to quash the Interlocutory Order or to expunge the portion of the order in paragraph No.10 at page No.10, wherein, the respondent has held that "it is evident from Section 3 and 4 of the Industrial Employment (Stand Orders) Act, 1946 that the Certifying Officer/third respondent is empowered to certify the matter which are not included in the Model Standing Orders provided they are fair and reasonable to decide the main appeal in IESO No.1 of 2005 on merits and in accordance with law without reference to uninfluenced by the above observations".

5. The learned senior counsel appearing on behalf of the second respondent/Management opposed the contentions by stating that the observations made in paragraph No.10 will not affect the merits of the case of either side of the parties. The Labour Court extracted the provisions of Law and no interpretations were provided in the said order. Mere extraction of the provisions of the statute would not affect the merits of the case on either side.

6. This being the nature of the case made in paragraph No.10 of the order, the writ petition is unnecessary and filed to prolong and protract the matter.

7. The learned senior counsel is of an opinion that though the main case was filed in the year 2005, the writ petitioner is prolonging the matter by filing many number of such Interlocutory Applications belatedly.

8. This Court is of the considered opinion that the Interlocutory Application filed by the writ petitioner was allowed by the Labour Court. His only grievance is that the findings made in paragraph No.10 may affect the main case. This Court is of an opinion that in paragraph No.10 of the order, the Labour Court has extracted the provisions of law and even in such case, the main case is to be decided based on the evidences as well as the provisions of law and on merits.

9. It is needless to state that if any factual observation made in the Interlocutory Application cannot be a binding factor as the final order is to be passed based on its merits and by interpreting the provisions of law and the evidences and documents produced by the respective parties before the Court.

10. This being the procedures to be followed at the time of passing final order, this Court is of the opinion that the

observations made in paragraph No.10 of the order may not have any implication as far as the final observation in the main case is concerned.

11. Under these circumstances, expunging the portion does not arise at all, accordingly, the Writ Petition stands dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

dua/sni

To

- 1.The Presiding Officer,
Labour Court/Appellate Authority
Under the Industrial Employment (Standing Orders) Act, 1946,
Coimbatore.
- 2.The Management of Lakshmi Machine Works Limited.,
Unit II, Kaniyur,
Coimbatore - 641 659.
- 3.Certifying Officer/
Joint Commissioner of Labour,
Coimbatore.

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No. 80590
+1cc to Mr.S.Bazeer Ahamed, Advocate, S.R.No.81280

W.P.No.5573 of 2018

PM(CO)
GN(30/10/2019)